

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Periodic Reporting  
(Proposal Eight)

Docket No. RM2017-12

PUBLIC REPRESENTATIVE COMMENTS

(September 18, 2017)

On July 31, 2017, the Postal Service filed Proposal Eight to change analytical principles relating to periodic reports and Commission compliance determinations.<sup>1</sup> It subsequently filed a public annex containing documentation of Table 1 on page 3 of the proposal.<sup>2</sup> The Commission established this proceeding on August 2, 2017, to consider a Postal Service proposal.<sup>3</sup> In the Order initiating this proceeding, the Commission appointed the undersigned to serve as Public Representative and established September 18, 2017, as the deadline for submitting written comments. Order No. 4025 at 3.

I. BACKGROUND

Prior to enactment of the Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198 (2006) (PAEA), Congress adopted the so-called “60 Percent Rule” by amending 39 U.S.C. § 3626 to add subsection (a)(6)(A).<sup>4</sup> The 60 Percent Rule provides

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<sup>1</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Eight), July 31, 2017 (Petition).

<sup>2</sup> Notice of the United States Postal Service of Filing Supplemental Material Regarding Proposal Eight as USPS-RM2017-12/1, August 31, 2017 (Notice). This supplemental material was submitted in response to a motion filed by the Alliance of Nonprofit Mailers for issuance of an information request. See Motion of Alliance of Nonprofit Mailers for Issuance of Information Request to the United States Postal Service, August 25, 2017. As explained by the Postal Service, its compilation of the supplemental material resulted in adjustments to several values in Table 1 in the Petition. Notice at 1.

<sup>3</sup> Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal Eight), August 2, 2017 (Order No. 4025).

<sup>4</sup> Special Ratemaking Provisions, Pub. L. No. 106-384, § 1(d), 114 Stat. 1460, 1461 (2000) (codified at 39 U.S.C. § 3622(a)(6)(A)).

that the estimated average revenue per piece to be received by the Postal Service from each subclass of what is currently referred to as nonprofit USPS Marketing Mail “shall be equal, as nearly as practicable, to 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail.”<sup>5</sup>

Under the PAEA’s new system for regulating market dominant prices and classes of service, subclasses were no longer employed as rate categories. See Docket No. R2007-1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 20 (Order No. 26) (“The Commission does not view capping subclass increases as sanctioned by the PAEA.”). The PAEA did not, however, repeal or modify the 60 Percent Rule which continued to apply to revenues received by the Postal Service at the “subclass level”. See 39 U.S.C. § 3626(a)(6)(A).

In its first notice of price adjustment for market dominant products under the PAEA, the Postal Service expressly noted that “[s]ince subclasses no longer exist in the new pricing system,...[it had] calculated this [60 percent] ratio at the class level.”<sup>6</sup> Having received no objection to this proposal, the Commission accepted the Postal Service’s application of the 60 Percent Rule at the class level.<sup>7</sup> Since filing its first PAEA market dominant rate case, the Postal Service has continued to apply the 60 Percent Rule at the class level,<sup>8</sup> and the Commission has continued to accept this practice.<sup>9</sup>

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<sup>5</sup> See 39 U.S.C. § 3622(a)(6)(A). USPS Marketing Mail is the new name adopted by the Postal Service during 2016 for what had previously been called Standard Mail. See Docket No. R2017-1, United States Postal Service Notice of Price Adjustment, October 12, 2016, at 1.

<sup>6</sup> Docket No. R2008-1, United States Postal Service Notice of Market-Dominant Price Adjustment, February 11, 2008, at 24.

<sup>7</sup> Docket No. R2008-1, Review of Postal Service Notice of Market Dominant Price Adjustment, March 17, 2008, at 32 (Order No. 66).

<sup>8</sup> See, e.g., Docket No. R2017-1, United States Postal Service Notice of Market Dominant Price Adjustment, October 12, 2016, at 40-41.

<sup>9</sup> See, e.g., Docket No. R2017-1, Order on Price Adjustments for First-Class Mail, Standard Mail, Periodicals, and Package Services Products and Related Mail Classification Changes, November 15, 2016, at 42 (Order No. 3610).

## II. SUMMARY OF THE POSTAL SERVICE'S PROPOSAL

Under Proposal Eight, the Postal Service would stop applying the 60 Percent Rule at the class level and would reinstitute its pre-PAEA practice of applying the rule separately at the subclass level to nonprofit USPS Marketing Mail Regular and nonprofit USPS Marketing Mail Enhanced Carrier Route.<sup>10</sup>

## III. COMMENTS

The Postal Service's application of the 60 Percent Rule at the class level was prompted by the PAEA's adoption of class-level price cap regulation in place of the breakeven price regulation previously mandated by the Postal Reorganization Act, Pub.L.91-375, 84 Stat. 719 (1970) (PRA) at the subclass level. *Id.* at 2. The class-level application of the 60 Percent Rule has been consistently followed since the Postal Service filed its first market dominant rate case in FY 2018.

As explained by the Postal Service in its Petition, the application of the 60 Percent Rule at the class level has resulted in revenues for nonprofit mail that have consistently failed fail to reach 60 percent of the average per piece revenues for commercial mail.<sup>11</sup> The Postal Service states that this is due to a different mail mix between Nonprofit and Commercial mail (within USPS Marketing Mail).<sup>12</sup>

The Postal Service states that a return to application of the 60 Percent Rule at the subclass level is "consistent with the language" of the PAEA. *Id.* at 5. The Public

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<sup>10</sup> Petition at 5. The Postal Service explains that nonprofit USPS Marketing Mail Regular is comprised of Letters, Flats, and Parcels products. *Id.* at 1 n.1. Nonprofit USPS Marketing Mail Enhanced Carrier Route is made up of High Density and Saturation Letters, High Density and Saturation Flats/Parcels, Carrier Route, and Every Door Direct Mail—Retail. *Id.*

<sup>11</sup> *Id.* at 3, Table 1 (Columns headed "Regular" and "Enhanced Carrier Route", FY 2009 through FY 2017). The Postal Service characterizes these results as "a permanent shortfall...for Regular and Enhanced Carrier Route, individually." *Id.* at 4-5. The data presented in Table 1 support the Postal Service's assertion that "when the Regular and Enhance Carrier Route ratios were both set at 60 percent [*i.e.* FY2000 through FY 2008], the overall ratio was above 60 percent...but...[w]hen the switch was made to setting the overall [class-level] ratio at 60 percent, the two disaggregated (subclass) ratios were pushed below 60 percent." *Id.* at 2-3.

<sup>12</sup> Petition at 1, 2. In a footnote, the Postal Service provides an explanation of how the different mail mix can produce an overall, class-level, ratio close to 60 percent, notwithstanding lower ratios at the subclass level for both Regular and Enhanced Carrier Route. *Id.* at 2 n. 5.

Representative agrees. While the PAEA established price cap regulation at the class level, it did not eliminate or modify the provision in section 3626(a)(6)(A) that the 60 Percent Rule be applied at the subclass level. Application of the rule at the subclass level can be accomplished without frustrating continued price cap regulation at the class level. Indeed, it would appear that application of the 60 Percent Rule at the subclass level will come closer to achieving the express goal of section 3626(a)(6)(A).

Of equal importance is the potential impact of Proposal Eight on nonprofit mailers. Nonprofit mailers rely upon reduced rates to foster their activities, including important fundraising efforts. The Postal Service projects that on a revenue neutral basis the impact of Proposal Eight on Regular Nonprofit mail would be an average price increase of 3.33 percent. *Id.* at 5. The Postal Service also projects that on a revenue neutral basis the impact of Proposal Eight on Enhanced Carrier Route Nonprofit would be an average price increase of roughly 6.94 percent. *Id.* The impact of these projected increases could, of course, be magnified by upward movement of the price cap.

The Postal Service states that “[t]o the extent...[these projected increases]...could imply a certain amount of ‘rate shock,’ [it] would aim to implement [Proposal Eight] over more than one price-adjustment cycle....” *Id.* From this statement, it appears that the Postal Service is contemplating implementation of Proposal Eight over as few as two price-adjustment cycles. Given the possibility that the impacts projected by the Postal Service could be magnified when combined with regular increases permitted under the price cap, if the cumulative increase is large, the Postal Service should consider an implementation of more than two price-adjustment cycles. The problem the Postal Service seeks to address by means of Proposal Eight has existed for almost ten years. It could require remediation over more than two price-adjustment cycles.

#### IV. CONCLUSION

The Public Representative respectfully submits the foregoing Comments for the Commission's consideration.

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